

FILED 13 FEB '19 10:42 USDC-ORE

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4
5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE DISTRICT OF OREGON

7 Kristine K. Yates;

8 Plaintiff,

9 v.

10 United States Environmental
11 Protection Agency; Oregon
12 Department of Environmental
13 Quality; Marion County Planning
14 Department; Dick Anderson
15 Construction Company, Silverton
16 Solar, LLC; Silverton Land Co.
17 LLC; TLS Capital Inc.; Cypress
18 Creek Renewables Development,
19 LLC; Cypress Creek Renewables,
20 LLC; Pine Gate Energy Capital,
21 LLC; Pine Gate Renewables, LLC;
22 Gordon Moe; Judy Dunn; Nikki
23 Anas; Zoe Gamble Hanes; Jerome
24 O'Brien; Blue Oak Energy; Sam
25 Lines; Patrick Leiback; Oregon
26 Department of State Lands;
27 Does 1-20;

28 Defendants
29

Civil Action No. 6:17-cv-1819-AA

Affidavit of Robert Mahler in
Support of Plaintiff's Response
to, and Dismissal of, Defendant,
Dick Anderson Construction's,
Motion For Summary Judgment

1 **STATE OF OREGON)**

2 **:SS**

3 **COUNTY OF MARION)**

- 4
- 5 1. I am Kris Yates' (Plaintiff's) husband in this action.
- 6 2. Kris Yates desires to proceed with her Complaint and I know that
- 7 her causes of action are justified and should be heard.
- 8 3. I am submitting this affidavit in support of Kris Yates'
- 9 opposition to the pending Dick Anderson Construction Company's
- 10 Motion for Summary Judgment to demonstrate to the Court that
- 11 there are genuine issues of material facts in this case that
- 12 precludes the entry of a summary judgment as a matter of law.
- 13 4. My supporting affidavit is based upon and supports Kris Yates'
- 14 MEMORANDUM OF POINTS AND AUTHORITIES, testimony, her pleadings
- 15 and papers on file, photos, videos, and exhibits.
- 16 5. I know the approval of the Solar Array, behind our property was
- 17 granted by Marion County based on Blue Oak Energy submitted
- 18 plans. Blue Oak's plans were the only plans on file when I
- 19 requested, and was given copies of, Marion County Planning
- 20 Department's permit to allow Silverton Solar LLC and Cypress
- 21 Creek renewables to build the Solar Array on the property behind
- 22 our home. I know there have been other professed "owners" of the
- 23 solar array and real property on which it is situated, since the
- 24 permit was issued.
- 25 6. I have photo evidence of the solar array construction process
- 26 starting on, or about, 4/18/16 for the Solar Array built behind
- 27 our home.
- 28 7. I know the contract between Cypress Creek Renewables, CCEPC, and
- 29 DAC states that DAC is responsible for all work performed on the
- solar array by subcontractor, any of subcontractor's personnel,

1 or lower tier subcontractors. I believe that Cypress Creek
2 Renewables, CCEPC, and DAC are responsible for all construction
3 of the Solar Array behind our home.

4 8. I have evidence, included with Kris Yates' declaration and
5 exhibits, and believe, that initial construction preparation
6 began on 4/18/16, for the solar array behind our home, and
7 lasted at least until 6/1/18, in some form or another.

8 9. I possess video and photo evidence, also submitted to
9 Defendant's Council, and to this court via my wife's declaration
10 and exhibits, detailing DAC's, and, or second tier
11 subcontractors having placed portable toilets, mobile offices,
12 and large truck towed travel trailers behind our home.

13 10. I have photo and video evidence, included in my wife's
14 declaration and exhibits, that DAC and or their subcontractors
15 through 6/1/18, left materials and debris on the solar array
16 property directly behind our home.

17 11. I have photo and video evidence, included in my wife's
18 declaration and exhibits of DAC and, or their
19 subcontractors continuously leaving construction materials and
20 debris behind our home during the building by DAC and, or their
21 subcontractors of the solar array.

22 12. I know DAC admits using "compaction equipment" behind our home to
23 compact the earth over several days and across the 12+/- acres in
24 preparation for driving heavy steel posts into the ground. DAC
25 compacted the earth and used equipment within a zone behind
26 our home restricted by Marion County Planning Department.
27 DAC used fill and piled the dirt behind our home, compacted
28 the fill dirt, and dug a drainage ditch directly behind our
29

1 property within the forbidden zone set by Marion County Planning
2 Department. I have photos and video, included in my wife's
3 declaration and exhibits, of DAC equipment compacting the earth
4 directly behind our property.
5

6 13. I know DAC and, or other subcontractors used compaction equipment
7 within a zone behind our home restricted by Marion County
8 Planning Department. I know DAC used fill and piled the dirt
9 directly behind our property, compacted the dirt, and dug a
10 drainage ditch directly behind our home within the forbidden zone
11 set by Marion County Planning Department. I have photos and
12 videos, included in my wife's declaration and exhibits, of DAC
13 equipment compacting the earth directly behind our property and
14 of the ditch dug by DAC.
15

16 14. I know DAC and, or other lower tier subcontractors constructed a
17 drainage ditch, and caused the earth to be compacted within the
18 forbidden zone as specified in Marion County Planning
19 Department's permit to build the solar array project behind our
20 home. The ditch and compaction of the earth results in
21 flooding to our property. The compacting of the earth directly
22 behind our property caused damaged to our home and property.
23 These events are trespass. I have photos and videos, include in
24 my wife's declaration and exhibits, of DAC equipment compacting
25 the earth directly behind our home. I know my wife has
26 responded to and has answered DAC interrogatories.
27

28 15. Marion County Planning Department Conditional Use application
29 approved the placement of the solar array on the property

1 directly behind our home. The conditional use permit regulates
2 and prohibits any construction within the prohibited zone (page3
3 #7 B ¶2). I have photos and videos, included in my wife's
4 declaration and exhibits, of DAC equipment compacting the earth
5 directly behind our property within the forbidden zone.
6

7 16. I know that, prior Defendant Cypress Creek Renewables (CCR),
8 being dismissed by the Court for lack of jurisdiction, they are
9 responsible for construction of the solar array behind our
10 property, and as such is doing business in Oregon as a foreign
11 corporation and, seemingly, actually under the jurisdiction of
12 this court. DA's declaration and support of DAC's Summary
13 Judgment Motion (page 2 #3), are included in my wife's
14 declaration and exhibits. In previous filings with the
15 court, in this case, CCR denied doing any business in Oregon or
16 having any responsibility and connection with the solar array
17 project behind our property. Pursuant to CCR and Cypress Creek
18 Standard form Subcontractor Agreement by and between CCEPC and
19 DAC, CCR, these entities controlled all construction of the
20 solar array project behind our property.
21
22

23 17. I am not aware of evidence that shows Marion County Planning
24 Department authorized any variation to allow Defendants to
25 violate the forbidden zone in the solar array project behind our
26 property. Violation of the Marion County Planning Department's
27 permit for the solar array assists in the creation of issues of
28 trespass and nuisance. I know that the controlling business
29 entities for the

1 construction of the solar array were Cypress Creek Renewables,
2 CCECP, and DAC. I am unaware of evidence that Cypress Creek
3 Renewables abided by Marion Planning Department's permit that
4 forbade any construction activity in the forbidden zone per
5 Marion County Planning Department's permit.
6

7 18. I know DAC signed a construction contract with CCECP dated August
8 25, 2017 effective as of July 28, 2017. Subject contract shows
9 no signatures by corporate officers of Cypress Creek Renewables
10 or Silverton Solar, LLC, and the effective date has been changed
11 to 8/24/17. DAC's contract with Cypress Creek Renewables and
12 CCECP has an effective date that has been changed without any
13 signature of any corporate officers of CCECP, which should void
14 the contract. The dates appear to be inconsistent with a
15 legitimate contract and work on the solar array preceded and
16 succeeded the contract.
17

18 19. I know that D. Anderson's declaration states that solar array
19 construction started on July 31, 2017 and all construction
20 equipment, all construction debris, and all leftover construction
21 material was all removed by October 5, 2017 (page 3 #5),
22 included in my wife's declaration and exhibits. I know
23 that construction on the solar array project behind our home
24 began much earlier than July 31, 2017 and materials left much
25 longer than October 5, 2017.
26
27
28
29

20. I know D. Anderson's declaration suggests DAC reported its work on the solar array project behind our home completed on November 7, 2017. DAC's notice of completion was accepted and signed by CCEPC, and by association by Cypress Creek Renewables, on November 11, 2017 (page 3 #6), included in my wife's declaration and exhibits. DAC was responsible for all additional subcontractors and second tier subcontractors work per their contract with Cypress Creek Renewables and CCEPC. Additional subcontractors and second tier subcontractors work was not completed by the date specified by DAC's notice of completion. I know that DAC, subcontractor(s), and second tier subcontractor(s) left much debris and construction materials for much longer periods, included in my wife's declaration and exhibits.
21. I know Page 3, #7, of D. Anderson's Declaration states, "other subcontractors to Cypress Creek Renewables were not finished" constructing the Solar Array behind Plaintiff's property. I know that Cypress Creek Renewables' contract with CCEPC, and DAC, establishes that DAC is the lead subcontractor for construction of the Solar Array behind our home and that DAC is responsible for all other subcontractors and 2nd tier subcontractors, included in my wife's declaration and exhibits.
22. I know Page 4, #8, of D. Anderson's Declaration states, "portable toilets and/or portable office... were not put behind our property by DAC." I know that Cypress Creek Renewables, CCECP, DAC, their subcontractors, or 2nd tier subcontractors placed portable toilets behind our property, included in my wife's declaration and exhibits.
23. I know Page 4, #9, of D. Anderson's Declaration states, "there were days in which limited construction debris was left on the property" by DAC. I know that Cypress Creek Renewables, CCECP, DAC, their subcontractors, and/or 2nd tier subcontractors left Solar Array construction materials, debris, and equipment behind our property for months. Plans submitted to Marion County Planning Department detailed an area in the southeast corner of

1 the proposed Solar Array construction, behind our property, for
2 storage of all construction materials, which would be outside
3 our view. See my wife's declaration and exhibits.

4 24. I know Page 4, #10, of D. Anderson's Declaration states, "DAC
5 utilized a vibrating compact roller for a total of 7 days",
6 behind our property, "the equipment was used throughout 9.7 acre
7 parcel of land on which the solar array was installed", "was
8 utilized within 100 yards of Plaintiff's property", and DAC's
9 work-days began at 7a.m. and ended at 5:00p.m." I know that DAC
10 utilized a compaction equipment, within the forbidden zone
11 specified by Marion County Planning Department, used the
12 compacting equipment over the 23+ acres parcel behind our
13 property, and worked prior to 7a.m. and after 5:00p.m. Please
14 see my wife's declaration and exhibits.

15 25. I know Page 4, B, of Defendant's Motion for Summary Judgment,
16 states that... "drainage ditch within 10 feet +/- from her land..."
17 I know that Cypress Creek Renewables, CCECP, DAC, or their
18 subcontractors, or second tier subcontractors, placed a drainage
19 ditch AND compacted the earth with compaction equipment well
20 within the 20 feet of our land as defined by Blue Oak and AVOCA
21 Engineers plans. I know submitted plans by both Blue Oak and
22 AVOCA ignored the forbidden zone parameters designated by Marion
23 County Planning Department's issued permit for the construction
24 of the Solar Array behind our property. I know the drainage
25 ditch and compaction of the earth causes excess water to flow and
26 pool onto our property. I know the compacted earth, well within
27 the prohibited zone, does not allow water to percolate into the
28 ground as when the soil was regularly tilled for planting crops.
29 I know the drainage ditch, well with the prohibited zone, allows
water to pool directly behind our property and overflow onto our
property. My wife has submitted many videos, many photographs,
and answers to interrogatories to Defendant's counsel
substantiating my Trespass, Nuisance, Diminished Value, and
Negligence claims. I am submitting my affidavit, that will, I
believe, be admissible evidence to substantiate my wife's claims.

1 My wife has answered Defendant's first set of interrogatories and
2 has delivered them to Defendant's counsel. I substantiate my
3 wife's Trespass claim with my affidavit to her genuine issue of
4 material facts and submissions.

5 26. I know on page 4 & 5, III, of Defendant's Summary Judgment
6 Standard, Defendant DAC states that my wife has not offered
7 "sufficient evidence... for a jury to return a verdict for that
8 party." I know that my wife has responded to Defendant's requests
9 for sufficient admissible evidence by supplying testimony, many
10 videos, many photographs, affidavits, declarations, and answers to
11 interrogatories on which a jury could reasonably find for her in
12 this matter.

13 27. I know on pages 5 & 6, of Defendant's Summary Judgment
14 Applicable Law, a. Nuisance, Defendant, DAC, suggests my wife has
15 no evidence of the claimed nuisance, the character of the
16 neighborhood, the nature of the thing complained of, the frequency
17 of the intrusion and, the effect upon the life, health, and
18 property. DAC, states that; a. my wife cannot prove the equipment
19 DAC used was placed in direct line of sight of her back yard
20 belonged to or was placed there by DAC; b. that DAC drove trucks
21 and used a steam roller (compaction equipment) that violated my
22 home is legally insufficient to constitute a nuisance. I know DAC
23 suggests they used compaction equipment for only 5 hours behind
24 our property, caused no damage to our property, worked only 4
25 weeks behind our property, DAC activities had only minor noise or
26 vibrations that affected our property and, that the Solar Array
27 was lawfully constructed and approved. I know my wife possesses
28 evidence that will prove her claimed nuisance, the character of
29 the neighborhood, the nature of the thing complained of, the
frequency of the intrusion and, the effect upon the life, health,
and property. Our property and the Solar Array property are zoned
EFU (Exclusive Farm Use). I know, and have evidence that, DAC's,
subcontractor's, and, or 2nd Tier subcontractor's equipment,
trash, portable toilets, travel trailers, portable office
buildings, and building materials, were placed in direct line of

1 sight of our property. My wife provided evidence to Defendant's
2 counsel that demonstrates the damage to our property due to the
3 serious vibrations caused by DAC's use of vibrating compaction
4 equipment behind our property. The heavy vibrations were felt
5 continuously for the entire time DAC used the compaction
6 equipment behind our property. The entire Solar Array
7 construction continues to be a nuisance to our health, life, and
8 property. There has been no evaluation by the EPA, Marion County
9 Planning Department, Cypress Creek Renewables, or DAC, of the
10 danger inherent for the tremendous health risks and long-term
11 effects of the dangerous Ozone emissions of the Solar Array
12 constructed behind our property. Our lives, our family's lives,
13 the lives of our livestock, are in danger due to the Ozone
14 emissions of the Solar Array. The effects of having lost a
15 cleaner, healthier, Exclusive Farm Use environment, due to
16 the construction of the Solar Array behind our property, are
17 apparent. The effects of constructing a Solar Array "industrial
18 complex", behind our home, by Cypress Creek Renewables, CCECP,
19 DAC, subcontractors, and 2nd Tier Subcontractors are, a reduction
20 of the value of our real property, loss of a clear, quiet, and
21 pleasant view of quietly growing crops, loss of viewing wildlife
22 on the Solar Array property, and loss of a weed free environment.
23 The underlying County Law allowing the Solar Array to be built
24 behind our property was rescinded at a public meeting of the
25 Marion County Board of Commissioners.

26 28. I know Defendant, DAC, suggests that my wife has no evidence of
27 claimed trespass. I know the evidence and testimony proves my
28 wife's claimed trespass. One look at the Solar Array, constructed
29 behind our property, is to view the intrusion of the acres of
metal and plastic erected on the Exclusive Farm Use land and the
abundance of noxious uncontrolled weeds that are encroaching our
property. I can easily view, just across the north fence of our
property, the compacted earth and drainage ditch caused to be
constructed by Cypress Creek Renewables, CCEPC, DAC,
subcontractors, and second tier subcontractors, although the

1 unattended heavy weed growth is obscuring and seems to be clogging
2 the drainage ditch. During rain, I can view the rainwater pooling
3 and moving toward our property from the southern portion of the
4 Solar Array property. The narrow drainage ditch, very close to
5 our north property line, overflows and the water moves to our
6 property and causes flooding during rainfall. I know the ongoing
7 trespass is caused by the intentional and, or unintentional result
8 of defendants, and their unintentional activity.

9 29. I know the activities occurring, resulting from the construction
10 of the Solar Array behind our property, have caused a continuing
11 nuisance and trespass to me, my family, and our property. I
12 know my wife's causes of action and claims are valid, applicable
13 law supports them, and she would appreciate the opportunity of a
14 trial. I know the activities resulting from the construction of
15 the Solar Array, behind our property, are not likely to be, nor
16 not in the realm of normal farming practices. I know Cypress
17 Creek Renewables, CCEPD, DAC, subcontractors, and second tier
18 subcontractors violated the forbidden zone, deviated from the
19 issued Marion County Planning Department's permit for construction
20 of the Solar Array behind our property. I know Cypress Creek
21 Renewables, CCEPD, DAC, subcontractors, and second tier
22 subcontractors, also deviated from the plans submitted to Marion
23 County Planning Department for the permit to construct the Solar
24 Array behind our property. I know Marion County Board of
25 Commissioners repealed the law, ordinance, statute that allowed
26 the construction of the Solar Array behind our property.

27 30. There are many issues of contested material facts. On behalf of
28 my wife, if permitted, I respectfully request that Defendant DAC's
29 summary judgment be dismissed.

1
2 I declare under penalty of perjury that the foregoing is true and
3 correct.

4 Bob Mahler
5 Bob Mahler
6

7
8 SUBSCRIBED AND SWORN to before me this 7 day of February, 2018.
9

10
11 Maria de Lourdes Nunez Manzo
12 NOTARY PUBLIC FOR OREGON

13 My Commission Expires: September 24, 2022
14
15

